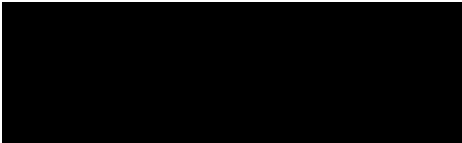


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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:



Office: CHICAGO, ILLINOIS

Date:

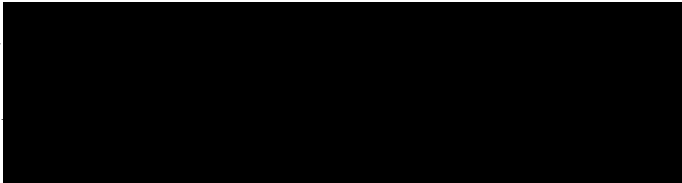
DEC 30 2004

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The waiver application was denied by the Interim District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The record indicates that the applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States. The interim district director concluded that the applicant had failed to establish extreme hardship would be imposed upon his qualifying relatives. The application was denied accordingly.

On appeal, counsel asserts that the interim district director found the applicant eligible for the waiver, but that he abused his discretion and denied the application. Counsel contends that the applicant established that his wife and children would suffer extreme hardship whether they remain in the United States or accompany the applicant to Mexico. Counsel submits a brief and other documentation on appeal.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted of forgery, battery, and obstruction of justice on November 5, 1996, which is less than 15 years prior to the adjudication of his application to adjust status. The applicant is therefore

statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(1)(B) of the Act.

The interim district director did not find that the applicant had established eligibility, contrary to counsel's assertion on appeal. The AAO notes that § 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). The interim district director clearly stated that the applicant had not shown that his spouse would suffer extreme hardship due to the applicant's inadmissibility. It was, therefore, not necessary to conduct a discretionary analysis of the equities in the instant case.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel asserts that the applicant's wife and children cannot relocate to Mexico with the applicant, because they would suffer severe financial and emotional hardship and would not be able to obtain adequate health care or education. Counsel contends that separating the children from their relatives would cause them psychological trauma. In support of this claim, counsel points to a letter written by the children's daycare provider in which she wrote that the applicant's children have difficulty adjusting to even minor changes. This constitutes an anecdotal observation rather than a psychological diagnosis, as the daycare provider's qualifications to render psychological diagnoses are unknown. Moreover, it appears to contradict the daycare provider's stated theory that behavioral problems in children from two-parent families are very rare.

Counsel cites numerous statistics from Nationmaster.com in support of his extremely dire portrayal of education in Mexico. The mention of mere numbers out of context, however, fails to establish that the applicant's children would be unable to obtain an education comparable to that available in the United States. For example, counsel warns that Mexico ranks last among "countries" in mathematical, reading, and scientific literacy. Counsel fails to include the information that, for the purposes of this ranking, Mexico is compared to essentially the most economically developed 26 countries in the world. Given the emphasis counsel places on Nationmaster.com's ranking system, it is well to note that the United States' own educational system might be deemed by some to be mediocre; the United States ranks only eighteenth out of 27 countries in mathematical literacy, fifteenth in reading literacy, and fourteenth in scientific literacy, placing behind countries such as the Czech Republic, New Zealand, and Ireland. Counsel does not acknowledge that the educational opportunities available in Mexico run the gamut from excellent to unacceptable, just as they do in the United States, which, also according to Nationmaster.com, ranks last among the developed countries of Asia, Europe, and North America in educational attainment. Italy is number one in this category. In sum, regarding this aspect of the applicant's claim, the statistics cited fail to show that the children would be deprived of their education by moving to Mexico.

Counsel and the applicant's wife state that she would probably not be able to afford her medication of Prozac if she moves to Mexico. There is no documentation in support of this claim. It is noted that the newsmedia have recently reported a trend where U.S. citizens travel to Mexico to purchase prescription drugs in that country, in violation of U.S. customs laws, since the drugs are so much cheaper in Mexico.

The record does not contain any documentation to the effect that the applicant would not be able to find employment in Mexico. The AAO notes that, while salaries may be lower in Mexico, as counsel points out, so, apparently, is the cost of living. The record also fails to establish that the applicant's children of five and ten years of age would be unable to adjust to a new living situation at this stage of their development.

The applicant has also failed to show that the applicant's family would undergo extreme hardship should they elect to remain in the United States while he returns to Mexico. The record reflects that the applicant's wife is employed, and medical insurance is available to her. The AAO acknowledges that the applicant's family may have to make financial and other adjustments, but there is no evidence on the record that they would be unable to do so. The fact that the applicant's wife has close relatives nearby may alleviate her situation.

The record contains a letter from a medical doctor written in early 2001, shortly after the birth of the applicant's wife's youngest child. At that time, the doctor, who did not identify himself as a psychiatrist, noted that the applicant's wife was receiving pharmaceutical therapy for anxiety. It is unknown when the condition began, nor whether the onset was due specifically to the applicant's immigration difficulties. The AAO notes that the birth of a child, for example, is a common trigger of depression and anxiety; therefore, it cannot be determined that the applicant's wife's condition at the time of the doctor's letter was attributable to the applicant's inadmissibility. In any case, it must be pointed out that anxiety and depression resulting from a family separation do not constitute an unusual or extreme circumstance, absent a showing that the condition is unusual or extreme.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and children would suffer hardship beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.